

INDUSTRIAL SITING DIVISION

STATE OF WYOMING

IN THE MATTER OF THE INDUSTRIAL)
SITING PERMIT APPLICATION OF) DOCKET NO. DEQ/ISC 09-03
TOP OF THE WORLD WIND ENERGY, LLC)
TOP OF THE WORLD WINDPOWER PROJECT)
)

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

THIS MATTER came before the Industrial Siting Council (Council) on December 2, 2009, for evidentiary hearing and the record was closed on that date. Council members present at the hearing included Shawn Warner, Chairman, Peter Brandjord, Jim Miller, Sandy Shuptrine, Darrell Offe, Gregg Bierei and Mike Daley. Bridget Hill, Senior Assistant Attorney General, was also present on the Council's behalf. Deborah A. Baumer from the Office of Administrative Hearings served as the Hearing Examiner in the proceeding. The Applicant, Duke Energy Corporation (Duke Energy) doing business as Top of the World Wind Energy, LLC (Top of the World) appeared by and through its counsel, Jenifer E. Scoggin. The Industrial Siting Division (Division) appeared by and through its counsel, Senior Assistant Attorney General, John S. Burbridge. Eight other parties participated in the evidentiary hearing including Quentin Richardson, Esq. on behalf of Converse County, Heather Duncan-Malone, Esq. on behalf of Natrona County, William Luben, Esq. on behalf of the City of Casper, Scott Peasley, Esq. on behalf of the Town of Rolling Hills, Janet Maines on behalf of the Monkey Road Improvement & Service District (Monkey Road District), Nathan Maxon, Esq. on behalf of the Wyoming Outdoor Council, Casey Tillard on behalf of the Tillard 55 Limited Partnership/Mart Madsen

Sheep Company and Peter Timbers, Esq. on behalf of Peter and Kathleen Woeck (Woeck). Top of the World's Exhibits TOTW-1 through TOTW-7, the Division's Exhibits 1 and 2, Converse County's Exhibit 1, City of Casper's Exhibit 1, Wyoming Outdoor Council's Exhibit 1, Monkey Road District's Exhibits 1 and 2 and Woeck's Exhibit 1 were admitted for purposes of the evidentiary hearing. The Council received two limited appearance statements in this case, before the evidentiary hearing. The Council has considered the evidence and argument of the parties, and makes the following findings:

I. JURISDICTION

Wyo. Stat. Ann. § 35-12-106(a) (LEXIS 2009) provides that, "No person shall commence to construct a facility, as defined in this chapter, in this state without first obtaining a permit for that facility from the council."

"Industrial facility" or "facility" means any industrial facility with an estimated construction cost of at least one hundred seventy three million, two hundred thousand dollars (\$173,200,000.00). Wyo. Stat. Ann. § 35-12-102(a)(vii) (LEXIS 2009).

Wyo. Stat. Ann. § 35-12-110(d) (LEXIS 2009) provides that upon receipt of an application for a permit, the director shall conduct a review of the application to determine if it contains all the information required by W.S. 35-12-109 and the rules and regulations.

Wyo. Stat. Ann. § 35-12-110(f) (LEXIS 2009) provides that not more than ninety (90) days after receipt of an application for a permit, the director shall:

- (i) Schedule and conduct a public hearing, provided that no hearing shall be held until the state engineer has submitted a preliminary and final opinion as to the quantity of water available for the proposed facility pursuant to W.S. 35-12-108;

- (ii) Notify the applicant and local governments of the hearing;

(iii) Cause notice of the hearing to be published in one (1) or more newspapers of general circulation within the area to be primarily affected by the proposed facility; and

(iv) Hold the hearing at a community as close as practicable to the proposed facility. The provisions of W.S. 35-12-111, 35-12-112 and 35-12-114 apply to the hearing.

Wyo. Stat. Ann. § 35-12-113(a) (LEXIS 2009) provides that within forty-five (45) days from the date of completion of the hearing the council shall make complete findings, issue an opinion and render a decision upon the record, either granting or denying the application as filed, or granting it upon terms, conditions or modifications of the construction, operation or maintenance of the facility as the council deems appropriate.

On September 21, 2009, Duke Energy, doing business as Top of the World Wind Energy, LLC submitted an application to the Division for an industrial siting permit to allow construction and operation of the Top of the World Windpower Project (Project) to be located in Converse County, Wyoming, near Glenrock, Wyoming. At the jurisdictional meeting on June 8, 2009, Duke Energy showed cost estimates for the total construction cost is in excess of \$173,200,000.00. Therefore, this Council has jurisdiction to hear and decide this matter.

II. STATEMENT OF THE CASE

Duke Energy, doing business as Top of the World submitted its initial application for an industrial siting permit on September 21, 2009 requesting a permit to allow construction and operation of a single phase wind energy generation project, consisting of 110 wind turbine generators. The proposed project is to be located four miles northeast of Glenrock and east of Rolling Hills, Converse County, Wyoming. The Division's staff subsequently determined that

Top of the World's application was complete and in full compliance with Wyoming law and is ready to issue a permit for the single phase Project. Top of the World requested the Council approve the application as submitted with exhibits. The Division and eight separate entities filed notices to become a party to these proceedings and appeared at the December 2, 2009 evidentiary hearing. Although all parties expressed various concerns about the impact of the project, five of the eight parties were in favor of issuing the permit.

III. ISSUES AND CONTENTIONS

The sole issue in this case is whether Duke Energy has proven, by a preponderance of the evidence, that the industrial siting permit application regarding the Top of the World Windpower Project meets the requirements of the Wyoming Industrial Development Information and Siting Act, Wyo. Stat. Ann. § 35-12-113 (LEXIS 2009) and the Industrial Development Information and Siting Rules and Regulations, Chapter 1, Section 9(a) (Division's Rules) governing the proposed wind energy generation project. If the Council decides to issue the industrial siting permit, it must also decide what, if any, conditions to place on the permit.

IV. FINDINGS OF FACT

1. Top of the World is an indirect, wholly owned subsidiary of Duke Energy. Duke Energy owns and operates electric generation for large and small energy consumers including municipalities and utilities, using a variety of generation resources. *Transcript of Proceedings (hereinafter Tr. of Proc.)*, p. 28; *TOTW-1*, p. 1-1.

2. Prior to Top of the World filing its application in this matter, Top of the World and the Division conducted a jurisdictional meeting on June 8, 2009. The Division reviewed the

financial budget for the project and determined that the cost exceeded the statutory dollar threshold of \$173,200,000.00. *TOTW's Exhibit; State's Exhibit 1, p. 8.*

3. From June 2009 until the filing of the application in September 2009, Top of the World representatives visited the governing bodies of the local governments in Converse and Natrona Counties. Open house meetings were held for the public at Glenrock on July 27, 2009 and at Rolling Hills on August 19, 2009. Top of the World also notified all State agencies by letter dated August 20, 2009, inviting questions, comments and concerns of the Application. A list of all meetings and details of the public and government involvement is found in Section 4 of the September 21, 2009 Application. Top of the World responded to all agency concerns prior to the hearing in this matter. *See Exhibit TOTW-1; State Exhibit 1, p. 6; Tr. of Proc., p. 36.*

4. On September 21, 2009, Top of the World filed its Application with the Division requesting a permit to allow construction and operation of a wind powered electricity generating facility consisting of a 200 megawatt capacity Project comprised of 110 wind turbine generators to be constructed in one phase. PacifiCorp, which operates as Rocky Mountain Power in Wyoming, will purchase all of the electricity generated by the Project. *See Exhibit TOTW-1; Tr. of Proc., pp. 30 and 31.*

5. Examination copies of the Application were filed on September 21, 2009 with the Clerk of Converse County and Converse County libraries at Glenrock and Douglas, as well as the State Librarian for public examination. That same date, the Division distributed copies of the Application to the State agencies pursuant to Wyo. Stat. Ann. § 35-12-110(b) (LEXIS 2009) to obtain information and recommendations relative to the impact of the proposed Project as it applies to each agencies area of expertise. *State's Exhibit 1, p. 6.*

4. The Project site is located in Converse County, Wyoming, approximately four miles northeast of Glenrock and east of Rolling Hills on 18,089 acres of leased land (fee and State). The Project will be constructed in a single phase over a 14 month period of time. *TOTW Exhibit 1, p. ES-1.*

5. All of the material constituting the filing of the Application was received by the Division on September 21, 2009. The Application consisted of 60 copies of the hardcopy document, *Section 109 Permit Application, Top of the World Windpower Project*, an Adobe .pdf computer file of that document, the payment of the application fee in the amount of \$43,084.00 as required by W.S. 35-12-109(b), and a letter of transmittal by Sean McCabe, Managing Director, Duke Energy Corporation, asking for the permit and attesting to the truthfulness and accuracy of the Application. *State's Exhibit 1, p. 4.*

6. Pursuant to the Industrial Siting Statutes, the Division staff subsequently published notice of the contested case hearing on Top of the World's Application for an industrial siting permit in the Douglas Budget on September 30, 2009 and October 7, 2009 and the Glenrock Independent on October 1 and October 8, 2009, as well as the Casper Star Tribune on September 28 and 29, 2009. *State's Exhibit 1, p. 6; Tr. of Proc., p. 8.*

7. The Division received eight requests to become parties in this matter. All eight requests were granted and those parties included Converse County, Natrona County, the City of Casper, the Town of Rolling Hills, Monkey Road, the Wyoming Outdoor Council, Tillard 55 Limited Partnership/Mart Madsen Sheep Company, and Rolling Hills residents, Peter and Kathleen Woeck. All parties with the exception of the Wyoming Outdoor Council, Monkey Road and the Woeck's expressed support of the Project. Those parties' objections will be discussed in greater detail below.

8. The Council did receive and consider two limited appearance statements in this matter in support of the Project.

9. Sean McCabe (McCabe) is the Managing Director of Duke Energy and the Project Developer of the Top of the World Project. McCabe testified he expects 16 to 17 permanent jobs operating the Project for the first two years and then 14 permanent jobs for the duration of the 20 year Project. According to McCabe, due to the concerns of the residents of the Towns of Glenrock and Rolling Hills, additional land was added to the Project site so that 10 turbines that were originally located within a mile of the those communities were relocated. In McCabe's opinion, the Project will not pose a threat of serious injury to the environment or the social and economic condition of the inhabitants, nor will it substantially impair the health, safety or welfare of the inhabitants. *Tr. of Proc.*, p. 58.

10. David Grogg (Grogg) is the Construction Manager for the Project. Grogg testified that the peak workforce in June 2010 is 374 construction workers. The construction workers are expected to reside in Casper, Glenrock, Douglas or Rolling Hills. A query of hotel/motel accommodations in the Project area reflected room availability during the Project's peak construction period. Workforce and delivery vehicles are expected to use Interstate 25, Wyo. 95 and 93 and U.S. Highway 20/26/87 to access private roads in the Project area. *Tr. of Proc.*, pp. 67; 71; 74; 85.

11. Grogg also testified that the water use for the Project will come from a well located at the facility and through Mel's Water Supply in Casper. Decommissioning of the Project would occur in accordance with Top of the World's Site Decommissioning Commitment reflected in *Exhibit 1*, 3-29. Additionally, Grogg testified that the Division's 13 proposed conditions to be placed on the permit were appropriate. *Tr. of Proc.*, p. 89.

12. Grogg confirmed that Duke Energy employment contracts require drug and alcohol testing programs on the contractors, including pre-employment screening, reasonable suspicion checks, post-incident screening and random on-site testing. Additionally, in order to deal with concerns over socioeconomic impacts due to subcontractors potentially leaving the area without paying service sector providers, Duke Energy intends to include a lien waiver with each invoice as a condition of payment. *Tr. of Proc.*, pp. 77; 80.

13. David Miller (Miller), is the Director of Environment Health Safety for Duke Energy. Miller was assigned to provide environment health and safety support for the Project. Top of the World's Application details the listing of all required permits from local, state and Federal governments. According to Miller, all permits either have been received or those that have not are not anticipated to be problematic. In Miller's professional opinion, the activities described for the proposed Project will not create any serious threat of social or economic injury to the inhabitants in the areas primarily affected by the Project. *Tr. of Proc.*, pp. 112.

14. David Phillips (Phillips) is the Project Manager for CH2MHill and prepared the Application for the Project, which is identified as TOTW Exhibit 1. Phillips testified that a water supply and water yield analysis was not requested by the Wyoming State Engineer's Office because the water use for the Project was well below the threshold required for such an analysis. Phillips further clarified that the water for construction would be provided by the contractors that will be doing the concrete production for the foundations. A well will be drilled for the O&M facility, located over two miles from Rolling Hills. Additionally, according to Phillips, the Glenrock Municipal Landfill has agreed to dispose of the solid wastes associated with the Project. The Project is in a non-core sage grouse area. Phillips also assured that the housing plan was more than adequate for the duration of the Project. Phillips analyzed the

socioeconomic impacts. Phillips identified direct economic benefits to the nearby communities as a result of the additional workforce in the area. Based upon his analysis, Phillips determined that the Project would not pose a threat of serious injury to the social or economic condition of the inhabitants, nor would the Project impair the health, safety or welfare of the inhabitants. Phillips also testified the proposed Project complied with all applicable laws. *Tr. of Proc.*, pp. 119 through 145; 259; *State's Exhibit 1*, pp. 37-30.

15. Wyoming Game and Fish personnel, Mary Flanderka, Al Conder and Scott Gamo testified at the hearing in this matter regarding a number of issues concerning the Project, including monitoring sage grouse, fisheries, avian issues, pronghorn antelope and elk. Potential effects of sedimentation in the Sand Creek basin and the effect on stream environments were also considered. The Wyoming Game and Fish Department is satisfied with the written agreement reached with Duke Energy regarding their issues of concern and believe that the proposed monitoring program addressed the Wyoming Game and Fish concerns. *Tr. of Proc.* pp. 369-380.

16. Dr. Tom Schroeder (Dr. Schroeder), Program Principal for the Industrial Siting Division, Department of Environmental Quality, receives and processes applications for permits by the Industrial Siting Council. Dr. Schroeder reviewed and processed the Top of the World Application in this matter. Dr. Schroeder identified areas of concern in State's Exhibit 1. Dr. Schroeder recommended 13 conditions to be placed on the permit. *Tr. of Proc.*, pp. 184-204.

17. According to Dr. Schroeder, the proposed Application complied with the applicable laws for an industrial siting permit. Dr. Schroeder testified that the Application adequately described the nature and location of the Project, adequately set forth the time, commencement and construction of the Project and adequately addressed the number and estimated job classifications. Dr. Schroeder asserted all water concerns were adequately

addressed by the State Engineer's Office and State's Exhibit 1, p. 27. Any residential well in the area, including those residents of the Monkey Road District, experiencing a problem with their well has a remedy or recourse through the State Engineer's Office. Permit Condition # 11 in *State's Exhibit 2* adequately covered potential issues regarding construction schedules and workforce issues associated with the Project. Dr. Schroeder believed potential environmental and reclamation issues were adequately addressed. *Tr. of Proc., pp. 184-204.*

18. Dr. Schroeder believed the Project did not pose a threat of serious injury to the environment or to the social and economic conditions of the area. The proposed Project also would not substantially impair the health, safety or welfare of the local inhabitants. Dr. Schroeder recommended approval of the single phase Project with the recommended conditions as set forth in State's *Exhibit 2*. Finally, Dr. Schroeder affirmed that all 10 local governments affected by the Project arrived at a mutually agreed upon allocation of impact assistance funds, resulting in 66 percent of the impact assistance funds to Converse County and 34 percent of the impact assistance funds distributed to Natrona County. *Tr. of Proc., pp. 184-204.*

19. Chairman Ed Warner (Warner) of the Converse County Commissioners testified that all five members of the commission met and discussed the Project. All members were in favor of the Project. Chairman Warner testified that the commissioners recently passed a resolution creating an advisory board to deal with multiple land issues, primarily on Federal and State lands in Converse County. The resolution will go into effect when the Commissioners have enough volunteers to form the board and have bylaws in place. *Tr. of Proc., pp. 216-221.*

20. Testimony from Robert Hendry (Hendry), Chairman of the Natrona County Commissioners, reflected all members of the commission were in favor of the Project and despite some concerns over the cumulative impact the Project created in the area regarding

housing, law enforcement and emergency services, believed the impacts would be handled through the impact assistance monies. *Tr. of Proc.*, pp. 231-232.

21. Both the City of Casper and Town of Rolling Hills completely supported the Project and expressed their agreement over the division of the impact assistance funds. All the concerns expressed by the Town of Rolling Hills were adequately addressed at meetings between the Town Council and Duke Energy. *Tr. of Proc.*, pp. 239-249.

22. Wyoming Outdoor Council's Wildlife Biologist, Sophie Osborn (Osborn), testified regarding concerns of impacts on sage grouse in the area. Osborn testified that due to a lack of science on impacts from wind energy development, she compared impacts from oil and gas development. Osborn testified that the wind turbines should be located at least five miles from sage grouse areas and believed 10 of the turbines in this Project should be moved. According to Osborn, Duke Energy also failed to account for all the raptor nests in the Project area. Additionally, Osborn expressed concerns over latticed met towers regarding bird strikes. Osborn also admitted that she had no on-the-ground experience with the Top of the World Project and conducted no research on the Project regarding her concerns. *Tr. of Proc.*, pp. 277; 279-282; 283; 291-292.

23. Casey Tillard (Tillard) testified on behalf of Tillard 55 and Mart Madsen Sheep Company, one of the landowners in this Project. Tillard expressed his support of the Project and also expressed his satisfaction with a decommissioning agreement between the landowners and Duke Energy. *Tr. of Proc.*, pp. 312-315.

24. Peter Woeck (Woeck) testified that the nearest turbine to his residence is .68 miles. Woeck expressed his opposition to the Project due to its location near his property. Woeck believed the Project would reduce his property value, and interfere with his view shed

and hunting areas, as well as negatively affect the wildlife in the area. Woeck testified he was not notified of the Project and did not have enough time to hire experts to assist him for the contested case hearing in this matter. *Tr. of Proc.*, pp. 318-332.

25. Janet Maines (Maines) testified on behalf of the Monkey Road District. The Monkey Road District consists of 460 acres, 92 lots, approximately three miles to the southwest of the Project. Maines expressed the Monkey Road's concerns regarding depreciation of property values, wildlife impacts, water concerns and potential truck traffic if a truck misses the turn off to the Project. Duke Energy agreed to install a sign at an appropriate intersection to direct the truck traffic away from the Monkey Road District's road. *Tr. of Proc.*, pp. 336-345.

26. All findings of fact set forth in the following conclusions of law section shall be considered a finding of fact and are fully incorporated into this paragraph.

V. CONCLUSIONS OF LAW

A. Principles of Law

27. Top of the World bears the burden of proof in the proceedings herein. "The general rule in administrative law is that, unless a statute otherwise assigns the burden of proof, the proponent of an order has the burden of proof." *JM v. Department of Family Services*, 922 P.2d 219, 221 (Wyo. 1996) (citation omitted); *Penny v. State ex rel. Wyoming Mental Health Prof. Licensing Board*, 120 P.3d 152, (Wyo. 2005).

28. Wyo. Stat. Ann. § 35-12-109(a) (LEXIS 2009) provides that an application for a permit shall be filed with the Division and contain the following information:

- (i) The name and address of the applicant, and, if the applicant is a partnership, association or corporation, the names and addresses of the

managers designated by the applicant responsible for permitting, construction or operation of the facility;

(ii) The applicant shall state that to its best knowledge and belief the application is complete when filed and includes all the information required by W.S. 35-12-109 and the rules and regulations, except for any requirements specifically waived by the council pursuant to W.S. 35-12-107;

(iii) A description of the nature and location of the facility;

(iv) Estimated time of commencement of construction and construction time;

(v) Estimated number and job classifications, by calendar quarter, of employees of the applicant, or contractor or subcontractor of the applicant, during the construction phase and during the operating life of the facility. Estimates shall include the number of employees who will be utilized but who do not currently reside within the area to be affected by the facility;

(vi) Future additions and modifications to the facility which the applicant may wish to be approved in the permit;

(vii) A statement of why the proposed location was selected;

(viii) A copy of any studies which may have been made of the environmental impact of the facility;

(ix) Inventory of estimated discharges including physical, chemical, biological and radiological characteristics;

(x) Inventory of estimated emissions and proposed methods of control;

(xi) Inventory of estimated solid wastes and proposed disposal program;

(xii) The procedures proposed to avoid constituting a public nuisance, endangering the public health and safety, human or animal life, property, wildlife or plant life, or recreational facilities which may be adversely affected by the estimated emissions or discharges;

(xiii) Preliminary evaluations of or plans and proposals for alleviating social, economic or environmental impacts upon local government or any special districts which may result from the proposed facility, which evaluations, plans and proposals shall cover the following:

- (A) Scenic resources;
 - (B) Recreational resources;
 - (C) Archaeological and historical resources;
 - (D) Land use patterns;
 - (E) Economic base;
 - (F) Housing;
 - (G) Transportation;
 - (H) Sewer and water facilities;
 - (J) Solid waste facilities;
 - (K) Police and fire facilities;
 - (M) Educational facilities;
 - (N) Health and hospital facilities;
 - (O) Water supply;
 - (P) Other relevant areas.
- (xiv) Estimated construction cost of the facility;
- (xv) What other state or federal permits and approvals are required;
- (xvi) Compatibility of the facility with state or local land use plans, if any;
- (xvii) Any other information the applicant considers relevant or required by council rule or regulation;
- (xviii) A brief description of the methods and strategies the applicant will use to maximize employment and utilization of the existing local or in-state contractors and labor force during the construction and operation of the facility.

29. Wyo. Stat. Ann. § 35-12-110(b) (LEXIS 2009) requires that the division shall obtain information and recommendations from the following state agencies relative to the impact of the proposed facility as it applies to each agency's area of expertise:

(i) Wyoming department of transportation;

(ii) Public service commission;

* * *

(iv) Game and fish department;

(v) Department of health;

(vi) Department of education;

(vii) Office of state engineer;

* * *

(ix) Wyoming state geologist;

(x) Wyoming department of agriculture;

(xi) Department of environmental quality;

* * *

(xiv) The University of Wyoming;

(xv) Department of revenue; and

(xvi) The Wyoming business council.

30. Wyo. Stat. Ann. § 35-12-110(c) (LEXIS 2009) provides the information required by subsection (b) of this section shall be provided by the agency from which it is requested not more than sixty (60) days from the date the request is made and shall include opinions as to the advisability of granting or denying the permit together with reasons therefore, and recommendations regarding appropriate conditions to include in a permit, but only as to the areas

within the expertise of the agency. Each agency which has regulatory authority over the proposed facility shall provide to the council a statement defining the extent of that agency's jurisdiction to regulate impacts from the facility, including a statement of the agency's capability to address cumulative impacts of the facility in conjunction with other facilities. The statement of jurisdiction from each agency is binding on the council.

31. Wyo. Stat. Ann. § 35-12-110(d) (LEXIS 2009) provides that upon receipt of an application, the director shall conduct a review of the application to determine if it contains all the information required by W.S. 35-12-109 and the rules and regulations. If the director determines that the application is incomplete, he shall within thirty (30) days of receipt of the application notify the applicant of the specific deficiencies in the application. The applicant shall provide the additional information necessary within thirty (30) days of a receipt of a request for additional information from the director.

32. Wyo. Stat. Ann. § 35-12-110(f) (LEXIS 2009) provides that not more than ninety (90) days after receipt of an application for a permit, the director shall:

- (i) Schedule and conduct a public hearing, provided that no hearing shall be held until the state engineer has submitted a preliminary and final opinion as to the quantity of water available for the proposed facility pursuant to W.S. 35-12-108;
- (ii) Notify the applicant and local governments of the hearing;
- (iii) Cause notice of the hearing to be published in one (1) or more newspapers of general circulation within the area to be primarily affected by the proposed facility; and
- (iv) Hold the hearing at a community as close as practicable to the proposed facility. The provisions of W.S. 35-12-111, 35-12-112 and 35-12-114 apply to the hearing.

33. Pursuant to Wyo. Stat. Ann. § 35-12-111 (a) (LEXIS 2009), the parties to a permit proceeding include:

(i) The applicant;

(ii) Each local government entitled to receive service of a copy of the application under W.S. 35-12-110(a)(i);

(iii) Any person residing in a local government entitled to receive service of a copy of the application under W.S. 35-12-110(a)(i) and any nonprofit organization with a Wyoming chapter, concerned in whole or in part to promote conservation or natural beauty, to protect the environment, personal health or other biological values, to preserve historical sites, to promote consumer interests, to represent commercial and industrial groups, or to promote the orderly development of the areas in which the facility is to be located. In order to be a party the person or organization must file with the office a notice of intent to be a party not less than twenty (20) days before the date set for the hearing.

(b) Any party identified in paragraph (a)(iii) of this section waives his right to be a party if he does not participate orally at the hearing. Any party identified in paragraph (a)(ii) of this section waives its right to be a party unless the local government files a notice of intent to be a party with the office not less than twenty (20) days before the date set for the hearing.

(c) Any person may make a limited appearance in the proceeding by filing a statement in writing with the council prior to adjournment of the hearing. A statement filed by a person making a limited appearance shall become part of the record and shall be made available to the public. No person making a limited appearance under this subsection is a party to the proceeding.

(d) No state agency other than the industrial siting division shall act as a party at the hearing. Members and employees of all other state agencies and departments may file written comments prior to adjournment of the hearing but may testify at the hearing only at the request of the council, the industrial siting division or any party.

(e) Any person described in W.S. 35-12-111(a)(ii) or (iii) who participated in the public hearing under W.S. 35-12-107 may obtain judicial review of a council decision waiving all or part of the application requirements of this chapter.

34. Pursuant to Wyo. Stat. Ann. § 35-12-113 (LEXIS 2009), the council shall:

(a) Within forty-five (45) days from the date of completion of the hearing the council shall make complete findings, issue an opinion and render a decision upon the record, either granting or denying the application as filed, or granting it upon terms, conditions or modifications of the construction, operation or maintenance of the facility as the council deems appropriate. The council shall not consider the imposition of conditions which address impacts within the area of jurisdiction of any other regulatory agency in this state as described in the information provided in W.S. 35-12-110(b), unless the other regulatory agency requests that conditions be imposed. The council may consider direct or cumulative impacts not within the area of jurisdiction of another regulatory agency in this state. The council shall grant a permit either as proposed or as modified by the council if it finds and determines that:

(i) The proposed facility complies with all applicable law;

(ii) The facility will not pose a threat of serious injury to the environment nor to the social and economic condition or inhabitants or expected inhabitants in the affected area; and

(iii) The facility will not substantially impair the health, safety or welfare of the inhabitants.

(b) No permit shall be granted if the application is incomplete.

(c) If the council determines that the location of all or part of the proposed facility should be modified, it may condition its permit upon that modification, provided that the local governments, and persons residing therein, affected by the modification, have been given reasonable notice of the modification.

(d) The council shall issue with its decision, an opinion stating in detail its reasons for the decision. If the council decides to grant a permit for the facility, it shall issue the permit embodying the terms and conditions in detail, including the time specified to commence construction, which time shall be determined by the council's decision as to the reasonable capability of the local government, most substantially affected by the proposed facility, to implement the necessary procedures to alleviate the impact. A copy of the decision shall be served upon each party.

(e) A permit may be issued conditioned upon the applicant furnishing a bond to the division in an amount determined by the director from which local governments may recover expenditures in preparation for impact to be caused by a facility if the permit holder does not complete the facility proposed. The permit holder is not liable under the bond if the holder is prevented from completing the facility proposed by circumstances beyond his control.

(f) Within ten (10) days from the date of the council's decision, a copy of the findings and the council's decision shall be served upon the applicant, parties to the hearing and local governments to be substantially affected by the proposed facility and filed with the county clerk of the county or counties to be primarily affected by the proposed facility. Notice of the decision shall be published in one (1) or more newspapers of general circulation within the area to be affected by the proposed facility.

35. The Industrial Development Information and Siting Rules and Regulations, Chapter 1 provide:

Section 7. Application information to be submitted.

In accordance with W.S. 35-12-109, the application shall contain the information required by the act with respect to both the construction period and online life of the proposed industrial facility and the following information the council determines necessary:

(a) The application shall state the name, title, telephone number, and post office address of the person to whom communication in regards to the application shall be made.

(b) A description of the specific, geographic location of the proposed industrial facility. The description shall include the following:

(i) Preliminary site plans at an appropriate scale indicating the anticipated location for all major structures, roads, parking areas, on-site temporary housing, staging areas, construction material sources, material storage piles and other dependent components;

(ii) The area of land required by the industrial facility and a land ownership map covering all the components of the proposed industrial facility.

(c) A general description of the major components of the proposed industrial facility such as boilers, steam generators, turbine generators, cooling facilities, production equipment, and dependent components.

(d) A description of the operating nature of the proposed industrial facility, the expected source and quantity of its raw materials, and energy requirements. The description shall include, but is not limited to, the following:

- (i) The proposed on-line life of the industrial facility and its projected operating capacity during its on-line life and, for transmission lines exceeding one hundred fifteen thousand (115,000) volts included as part of the proposed industrial facility, a projection indicating when such lines will become insufficient to meet the future demand and at what time a need will exist to construct additional transmission lines to meet such demands;
 - (ii) Products needed by facility operations and their source.
- (e) A statement that shall be a reasonable estimate of the calendar quarter in which construction of the industrial facility will commence, contingent upon the issuance of a permit by the council.
- (f) A statement that shall be a reasonable estimate of the maximum time period required for construction of the industrial facility and an estimate of when the physical components of the industrial facility will be ninety (90) percent complete, and the basis for that estimate.
- (g) The applicant shall identify what it deems to be the area of site influence and the local governments primarily affected by the proposed industrial facility as defined in sections 2(b) and (c), respectively, of these regulations. The immediately adjoining area(s) and local governments shall also be identified with a statement of the reasons for their exclusion from the list of area(s) or local governments primarily affected by the proposed industrial facility.
- (h) The estimated number of employees needed to complete the construction and operation of the facility by the applicant, its contractors and subcontractors to include job classifications by calendar quarter. The estimate should also include:
- (i) Seasonal fluctuations and the peak employment during both construction and operation;
 - (ii) Annual payroll;
 - (iii) Expected benefits, if any, to be provided including housing allowances, transportation allowances, and per diem allowances.
- (i) An evaluation of the social and economic conditions in the area of site influence. The social and economic conditions shall be inventoried and evaluated as they currently exist, projected as they would exist in the

future without the proposed industrial facility and as they will exist with the facility. Prior to submitting its application, each applicant shall confer with the administrator to define the needed projections, the projection period and issues for socioeconomic evaluation. The evaluation may include, but is not limited to:

- (i) Land use designation of the site location, including whether or not the use of the land by the industrial facility is consistent with state, intrastate, regional, county and local land use plans, if any. The analysis shall include the area of land required and ultimate use of land by the industrial facility and reclamation plans for all lands affected by the industrial facility or its dependent components;

- (ii) A study of the area economy including a description of methodology used. The study may include, but is not limited to, the following factors:

- (A) Employment projections by major sector;
- (B) Economic bases and economic trends of the local economy;
- (C) Estimates of basic versus non-basic employment;
- (D) Unemployment rates;

- (iii) A study of the area population including a description of methodology used. The study may include, but is not limited to, an evaluation of demographic characteristics for the current population and projections of the area population without the proposed industrial facility;

- (iv) An analysis of housing facilities by type, including a quantitative evaluation of the number of units in the area and a discussion of vacancy rates, costs, and rental rates of the units. The analysis should include geographic location, including a quantitative evaluation of the number of units in the area required by the construction and operation of the proposed industrial facility and a discussion of the effects of the proposed industrial facility on vacancy rates, costs, and rental rates of the units. Specific housing programs proposed by the applicant should be described in detail;

- (v) An analysis of transportation facilities containing discussion of roads (surface, type), and railroads (if applicable). An analysis of effects on transportation facilities including effects on service levels of roads, haul

routes for materials and supplies, increased rail traffic at grade crossings, and intersection of new access roads with existing roads;

(vi) Public facilities and services availability and needs, which may include, but are not limited to:

(A) Facilities required for the administrative functions of government;

(B) Sewer and water distribution and treatment facilities including the capability of these facilities to meet projected service levels required due to the proposed industrial facility. Use of facilities by the proposed industrial facility should be assessed separately from population related increases in service levels;

(C) Solid waste collection and disposal services including the capability of these facilities to meet projected service levels required due to the proposed industrial facility. Use of facilities by the proposed industrial facility should be assessed separately from population related increases in service levels;

(D) Existing police and fire protection facilities including specific new demands or increases in service levels created by the proposed industrial facility;

(E) An analysis of health and hospital care facilities and services;

(F) Human service facilities, programs and personnel, including an analysis of the capacity to meet current demands and a description of problems, needs, and costs of increasing service levels;

(G) An analysis of user-oriented community recreational facilities and programs and urban outdoor recreational opportunities including descriptions of recreational resources, locations of the recreational resources, and the types of recreational resources and an analysis of outdoor, resource-oriented recreational opportunities including locations and types of the recreational resources;

(H) Educational facilities, including an analysis based upon enrollment per grade, physical facilities and their capacities

and other relevant factors with an assessment of the effect that the new population will have on programs and facilities;

(I) Problems due to the transition from temporary, construction employees to operating workforces should be addressed. Changes in levels of services required as a result of the proposed industrial facility should specifically be addressed. Cumulative impacts of the proposed industrial facility and other developments in the area of site influence should be addressed separately. This assessment should examine increased demands associated with the construction and operational phases of the proposed industrial facility, as well as effects on the level of services as the construction or operational workforces decline;

(J) A copy of any studies that may have been made of the social or economic impact of the industrial facility.

(vii) A fiscal analysis over the projection period for all local governments and special districts identified by the applicant as primarily affected by the proposed industrial facility, including revenue structure, expenditure levels, mill levies, services provided through public financing, and the problems in providing public services. The analysis may include, but is not limited to:

(A) An estimate of the cost of the industrial facility subject to sales and use taxes and expected payments by quarter for the construction period. This estimate should include a breakdown by county if the components of the industrial facility will be located in more than one county. The estimate will also include projections of the impact assistance payments available under W.S. 39-6-411(c) and W.S. 39-6-512(d) generated by the proposed industrial facility through the sales and use tax payments;

(B) An estimate of the cost of components of the industrial facility which will be included in the assessed value of the industrial facility for purposes of ad valorem taxes for both the construction and operations periods. This estimate should include a breakdown by county if the components of the industrial facility will be located in more than one county.

(j) An evaluation of the environmental impacts. The items shall be noted and evaluated as they would exist if the proposed industrial facility were built. Each evaluation should be followed by a brief explanation of each impact and the permit issued that regulates the impact. If the impact is not regulated by a state regulatory agency or federal land management agency, the application must include plans and proposals for alleviating adverse impacts. Cumulative impacts of the proposed industrial facility and other projects in the area of site influence should be addressed separately.

(k) The applicant shall describe the procedures proposed to avoid constituting a public nuisance, endangering the public health and safety, human or animal life, property, wildlife or plant life, or recreational facilities which may be adversely affected by the proposed facility, including:

(i) Impact controls and mitigating measures proposed by the applicant to alleviate adverse environmental, social and economic impacts associated with construction and operation of the proposed industrial facility;

(ii) Monitoring programs to assess effects of the proposed industrial facility and the overall effectiveness of impact controls and mitigating actions.

B. Application of Principles of Law

36. This Council has considered all the evidence and testimony presented at the December 2, 2009 hearing in this matter. The concerns expressed by the parties in previous wind energy cases regarding the situation of subcontractors leaving the area without paying service vendors causes a socioeconomic impact. Therefore, this Council finds it appropriate to condition the permit Application upon notification to the residents in the area of impact when the Project is nearing completion in order to protect the service vendors.

37. This Council has also considered the concerns expressed by Wyoming Outdoor Council's wildlife biologist regarding sage grouse, raptor nests and bird strikes. The biologist suggested the relocation of 10 wind turbines which this Council finds unreasonable. Duke Energy appropriately relied upon the recommendations made by Wyoming Game and Fish and

the U.S. Wildlife Service regarding the lack of significant impacts of the Project to sage grouse and other wildlife.

38. This Council has also considered the arguments of the Woeck's regarding a lack of timely notice of the Project and the impact of the Project on the Woeck's viewshed and area wildlife. The Council finds and concludes that Duke Energy properly notified the residents of the Project area in accordance with the law. The statutes do not require personal notification. The Duke Energy developers also conducted several meetings with the local residents to discuss concerns and mitigate impacts. The Woeck's had an opportunity to participate at the meetings and did not. Duke Energy complied with all notification requirements in this matter. Additionally, although the Council recognizes one tower of the Project may visually impact the Woecks, the Project need not eliminate all impacts in order for the Project to be in compliance with the statutes. The Wyoming Supreme Court has addressed the issue and held that, "An examination of the factors included makes manifest the proposition that the Industrial Siting Council is to be concerned with the collective not individual welfare of the present and expected inhabitants." *Laramie River Conservation Council v. Industrial Siting Council*, 588 P.2d 1241, 1253 (Wyo. 1978). Therefore, the Council concludes that the Project will not result in a substantial impairment of health, safety or welfare of the present or proposed inhabitants of the areas of site influence.

39. Finally, this Council has considered the arguments of the Monkey Road District residents concerning the impact on the resident's property values, water and wildlife. This Council is satisfied that the Project will not have an impact on the water supply. This Council is satisfied with the result of Duke Energy's analysis of the environmental and socioeconomic impacts.

40. Duke Energy has shown, by a preponderance of the evidence, that it filed a completed application with the Division regarding the 110 wind turbines in the Top of the World Windpower Project, and included the requirements in Wyo. Stat. Ann. § 35-12-109(a) (LEXIS 2009) and Chapter 1, Section 7 of the Rules and Regulations and that the proposed Project complies with all applicable law.

41. Duke Energy has shown, through testimony and exhibits, that the proposed Project will not pose a threat of serious injury to the environment nor to the social and economic condition or inhabitants in the affected area.

42. Finally, through the testimony of all its witnesses, as well as the exhibits submitted, Duke Energy has demonstrated the proposed Project will not substantially impair the health, safety or welfare of the inhabitants.

43. With the proposed conditions set forth in *State's Exhibits 1 and 2*, this Council is satisfied that the additional Condition #14, as modified, will assure compliance with the statutes and rules at issue in this matter regarding this Project.

DECISION

Pursuant to the authority vested in the Industrial Siting Council by WYO. STAT. ANN. § 35-12-113 (LEXIS 2009), this Council hereby **grants** the Industrial Siting Permit Application filed by Duke Energy, doing business as Top of the World Wind Energy, LLC to construct and operate the Top of the World Windpower Project, a wind energy generation project consisting of 110 wind turbines to be located near the towns of Glenrock and Rolling Hills, Wyoming in Converse County, Wyoming.

- b. The extent to which construction has been completed in accordance with the approved schedule;
- c. Any revised time schedules or time tables for construction, operations, and reclamation, and a brief summary of the construction, reclamation, and other activities that will occur in the next one-year period; and
- d. Demonstration of compliance with permit conditions.

Condition #10. In order that the ISD may monitor Permittee's performance, the Permittee shall institute the following monitoring program that shall be recorded on a monthly basis and reported to the ISD on a quarterly basis through the construction period of each phase. Monthly data will be in a form prescribed by ISD and shall include:

- a. The average and peak number of employees for the Permittee, contractors and subcontractors.
- b. Employee city and state of residency at the time of hire and the employee city and state while employed and type of residence while employed.
- c. The number of new students enrolled by grade level and school district who are related to Permittee employees, identified as either local (no change of residence) and in-migrants.
- d. Wyoming resident versus non-resident mix of workforce.
- e. An updated construction schedule for the phases in the form of Figure 3-1 as shown on page 3-3 of the *Section 109 Permit Application Top of the World Windpower Project* (Application).

Condition #11. The Permittee shall notify the ISD in advance of proposed changes to the scope, purpose, size or schedule of the project. The Director may authorize such changes if he or she finds that:

- a. The change should not result in any significant adverse environmental, social, and economic impacts in the area of site influence; and
- b. No party nor Council Member has requested that the matter be heard before the Council in accordance with the permit procedures of W. S. 35-12-106 (c) (d).

The Director will provide public notice of the proposed change and his intent to approve the request.

Condition #12. The Permittee will notify the ISD in advance and provide updates to the construction schedule, Figure 3-1, the work force table, Table 3-1, and pages 5-84 through 5-88 and all other pages of the Application where changes are expected to occur if:

- a. Actual on-site workforce during construction is expected to exceed the peak number estimated in the Application by more than fifteen percent (15%);
- b. The Permittee wishes to make changes to the lodging plan as described in the Application.

The Director may authorize such changes or refer the matter to the Siting Council.

Condition #13. As may be subsequently required by the Director, the Permittee shall pay a fee based on the estimated costs to prepare, schedule, and conduct a special hearing or meeting of the Council to remedy any action or inaction by the Permittee. Unused fees shall be refunded to the Permittee.

Condition #14. When the Project is nearing completion, Permittee shall place notice to that effect in the newspapers in the general area of the Project.

ORDER

IT IS THEREFORE ORDERED that the Industrial Siting Permit Application known as Top of the World Windpower Project as submitted by Duke Energy, and modified by this Council as set forth above in Conditions 1 through 14 be and is hereby granted.

DONE this 31 day of DECEMBER 2009.

/s/

Signature on file _____

Shawn Warner, Chairman
Industrial Siting Council
Herschler Building, Fourth Floor West
122 West 25th Street
Cheyenne, Wyoming 82002
(307) 777-7170

CERTIFICATE OF SERVICE

I hereby certify that the original of the foregoing document was served upon the Department of Environmental Quality, Industrial Siting Division and a true and correct copy was served upon the parties by mailing same, postage prepaid, on the 5 day of Jan, 2010, addressed to the following:

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 **/s/**
Signature on file 
Industrial Siting Council